

Small Business Administration

§ 120.440

which consent SBA may withhold in its sole discretion. The Lender must continue to hold the note and other loan documents, and service the loan unless SBA otherwise agrees in its sole discretion.

(c) For purposes of determining the percentage of ownership a Lender has retained, SBA will not consider a Lender to be the owner of the part of a loan in which it has sold a participating interest.

§ 120.433 What are SBA's other requirements for sales and sales of participating interests?

SBA requires the following:

(a) The Lender must be in good standing with SBA as defined in § 120.420(f) and determined by SBA in its discretion;

(b) The Lender has satisfactory SBA performance, as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission); and

(c) In transactions requiring SBA's consent, all documentation must be satisfactory to SBA, including, if SBA determines it to be necessary, a multi-party agreement.

[64 FR 6507-6509, Feb. 10, 1999, as amended at 73 FR 75511, Dec. 11, 2008]

§ 120.434 What are SBA's requirements for loan pledges?

(a) Except as set forth in § 120.435, SBA must give its prior written consent to all pledges of any portion of a 7(a) loan, which consent SBA may withhold in its sole discretion;

(b) The Lender must be in good standing with SBA as defined in § 120.420(f) and determined by SBA in its discretion;

(c) The Lender has satisfactory SBA performance, as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be con-

sidered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

(d) All loan documents must be satisfactory to SBA and must include a multi-party agreement among SBA, Lender, the pledgee, FTA and such other parties as SBA determines are necessary;

(e) The Lender must use the proceeds of the loan secured by the 7(a) loans only for financing 7(a) loans and for costs and expenses directly connected with the borrowing for which the loans are pledged;

(f) The Lender must remain the servicer of the loans and retain possession of all loan documents other than the original promissory notes;

(g) The Lender must deposit the original promissory notes at the FTA; and

(h) The Lender must retain an economic interest in and the ultimate risk of loss on the unguaranteed portion of the loans.

[64 FR 6507-6509, Feb. 10, 1999, as amended at 73 FR 75511, Dec. 11, 2008]

§ 120.435 Which loan pledges do not require notice to or consent by SBA?

Notwithstanding the provisions of § 120.434(e), 7(a) loans may be pledged for the following purposes without notice to or consent by SBA:

(a) Treasury tax and loan accounts;

(b) The deposit of public funds;

(c) Uninvested trust funds;

(d) Discount borrowings at a Federal Reserve Bank; or

(e) Advances by a Federal Home Loan Bank.

[64 FR 6507-6509, Feb. 10, 1999, as amended at 73 FR 75511, Dec. 11, 2008]

CERTIFIED LENDERS PROGRAM (CLP)

§ 120.440 The Certified Lenders Program.

Under the Certified Lenders Program (CLP), designated Lenders process and

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close 7(a) loans and service and liquidate such loans in accordance with subpart E of this part. SBA gives priority to applications and servicing actions submitted by Lenders under this program, and will provide expedited loan processing or servicing. All other rules in this part 120 relating to the operations of Lenders apply to CLP Lenders.

[61 FR 3235, Jan. 31, 1996; 61 FR 7986, Mar. 1, 1996, as amended at 72 FR 18360, Apr. 12, 2007]

§ 120.441 How does a Lender become a CLP Lender?

(a) An SBA field office may nominate a Lender or a Lender may request a field office to consider it for CLP status. SBA district directors may approve and renew a Lender's CLP status. The district director will consider whether the Lender:

(1) Has the ability to process, close, service and liquidate loans;

(2) Has a satisfactory performance history with SBA, including the submission of complete and accurate loan guarantee application packages;

(3) Has an acceptable SBA purchase rate; and

(4) Has shown the ability to work well with the local SBA office.

(b) If the district director does not approve a request for CLP status, the Lender may appeal to the D/FA, whose decision will be final. If SBA grants CLP status, it applies only in the field office that processed the CLP designation. A CLP Lender must execute a Supplemental Guarantee Agreement that will specify a term not to exceed two years.

PREFERRED LENDERS PROGRAM (PLP)

§ 120.450 What is the Preferred Lenders Program?

Under the Preferred Lenders Program (PLP), designated Lenders process, close, service, and liquidate SBA guaranteed loans with reduced requirements for documentation to and prior approval by SBA.

§ 120.451 How does a Lender become a PLP Lender?

(a) An SBA field office serving the area in which a Lender's office is located can nominate the Lender, or a

Lender can request a field office to consider it for PLP status. The SBA field office will forward its recommendation to an SBA centralized loan processing center which will submit its recommendation and supporting documentation to the appropriate Office of Capital Access official in accordance with Delegations of Authority for final decision.

(b) In making its decision, SBA considers whether the Lender:

(1) Has the required ability to process, close, service and liquidate loans;

(2) Has the ability to develop and analyze complete loan packages; and

(3) Has satisfactory SBA performance, as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

(c) Before it can operate as a PLP Lender, the approved Lender must execute a Supplemental Guarantee Agreement, which will specify a term not to exceed two years.

(d) When a PLP's Supplemental Guarantee Agreement expires, SBA may recertify it as a PLP Lender for an additional term not to exceed two years. Prior to recertification, SBA will review a PLP Lender's loans, policies and procedures. The recertification decision is made by the appropriate Office of Capital Access official in accordance with Delegations of Authority and is final.

(e) When a PLP Lender's Supplemental Guaranty Agreement expires, SBA may recertify the Lender as a PLP Lender for an additional term not to exceed two years. Prior to recertification, SBA will review a PLP Lender's loans, policies, procedures, SBA performance, Risk Rating, review or examination results, and other risk related information as determined by SBA.